MINISTER OF LABOUR, MALAYSIA

v.

NATIONAL UNION OF JOURNALISTS MALAYSIA

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ (MALAYA)
HARUN HASHIM SCJ
MOHD. JEMURI SERJAN SCJ
[SC CIVIL APPEAL NOS. 01-46-89 & 02-356-89]
12 OCTOBER 1990

ADMINISTRATIVE LAW: *Exercise of discretion by Minister - Executive - Power under statute - Subjective powers - Whether exceeded his jurisdiction - Ultra vires - Guidelines in Wednesbury's case - Natural justice.*

LABOUR LAW: *Dismissal - Whether just cause or excuse - Minister's refusal to refer trade dispute to Industrial Court - Whether Minister exercised discretion according to law - Judicial review - Ultra vires - Whether proper basis of facts - No inquiry held before dismissal - Natural justice - Section 26(6) Industrial Relations Act 1967.*

The subject matter of this dispute is the alleged dismissal without just cause and excuse of one Y who was a senior reporter with the Utusan Melayu (UM). Certain allegations of misconduct by Y were carried in the Star and New Straits Times; as a result of this publicity, UM by way of letter dated 19 September 1987 requested Y to explain these allegations alleging that the alleged adverse publicity had damaged the image of UM and suspended him. Y replied that UM had already prejudged him and said any explanation would be futile; Y questioned the validity of his suspension and demanded reinstatement.

As a result of Y's reply, UM dismissed Y. The respondent NUJ tried to obtain Y's reinstatement but were unsuccessful; NUJ then reported the trade dispute to the Director-General of Industrial Relations, alleging that Y's dismissal was without just cause and excuse and that Y's dismissal without an inquiry breached the rules of natural justice.

The Minister was advised that the dispute could not be settled; the Minister then decided for various reasons, not to refer the dispute to the Industrial Court and held instead, after considering all relevant documents (as stated in the Minister's affidavit), that Y had been dismissed with just cause and excuse. The NUJ then sought and obtained orders of *certiorari* and *mandamus* in relation to the Minister's refusal to refer the dispute to the Industrial Court, the High Court holding that the Minister had acted in excess of jurisdiction.

The Minister of Labour and UM lodged separate appeals; however since the issue was the same, the matters were heard together. The question for the Court was whether the Minister acting under s. 26(2) of the Industrial Relations Act 1967 (the Act) had exercised his discretion according to law.

Held:

[1] On the facts of this case, there is no question of the Minister having acted *mala fide*. The principles upon which an Executive may exercise his discretion vested in him under any Act, particularly where the discretion is expressed in wide terms, has been authoritively laid down in many cases.

[2] The Court is unable to accept the NUJ's contention that the conferment by Parliament of a discretion upon the Minister under s. 26(2) of the Act without any express limitation gives the Minister a subjective power as the authorities show that the Courts have developed a broad or extended doctrine of *ultra vires* whereby they may review action taken in the exercise of wide discretionary powers.

[3] As to the Minister's Counsel's submission that there were no guidelines in the Act for the Minister to follow when exercising his discretion, the basic legal principles stated in *Wednesbury's* case and applied in Malaysia are to be followed as guidelines.

[4] (a)The Court could not identify which of the documents were relevant documents referred to by the Minister because he did not categorically particularise which documents were relevant and which were not, bearing in mind that there were various letters and newspaper reports.

(b) It would seem that the facts that weighed heavily on the mind of the Minister was the adverse publicity and the unsatisfactory reply from Y; he completely ignored or had not given sufficient weight to Y's denials and the submission by NUJ on Y's behalf which clearly raised the question of breach of rule of natural justice in that UM dismissed Y without a proper inquiry which should have put him on notice that the validity of the dismissal could be questionable.

(c) In arriving at his decision the Minister had acted upon an incorrect basis of facts, thus vitiating the decision. These factors clearly raised a number of pertinent issues which ought to be properly inquired into by the Industrial Court and more importantly the innocence of Y of all the allegations against him in the light of his denial, takes prominence in establishing the invalidity of his dismissal.

[5] In the light of the above principles, the Court held that the Minister in refusing to refer the trade dispute to the Industrial Court upon the grounds stated, had acted unlawfully or had overstepped the true limits of his discretion and had exceeded his jurisdiction.

[Appeal dismissed.]

Cases referred to:

Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 KB 223
Breen v. Amalgamated Engineering Union & Ors. [1971] 2 QB 175
Congreve v. Home Office [1976] 1 QB (CA) 629
Education Secretary v. Tameside Metropolitan Borough Council [1977] AC 1014
Liversidge v. Anderson [1942] AC 206
Minister of Labour Malaysia v. Lie Seng Fatt [1990] 1 CLJ (Rep) 195
National Union of Hotel, Bar and Restaurant Workers v. Minister of Labour and Manpower [1980] 2 MLJ 189
Nakkuda Ali v. Jayaratne [1951] AC 66
Padfield & Ors. v. Minister of Agriculture, Fisheries and Food & Ors. [1968] 1 All ER 694
Padfield v. Minister of Agriculture, Fisheries and Food [1968] AC 997
Ridge v. Baldwin [1964] AC 40
Secretary of State for Employment v. ASLEF (No. 2) [1972] 2 QB 455
Swan Hill Corporation v. Bradbury [1937] 56 CLR 746

Legislation referred to:

Industrial Relations Act 1967, ss. 18(5), 26(2)
Rules of the High Court 1980, O. 53 r. 1

In Civil Appeal 01-46-89
For the appellant - Mary Lim
For the respondent - B. Lobo; M/s. Lobo & Associates

In Civil Appeal 02-356-89
For the appellant - Lim Chor Pee (Syed Hamid Albar with him); M/s. Albar Zulkifly & Yap
For the respondent - B. Lobo; M/s. Lobo & Associates

[**Editor's Note:** The following case was heard together at this Supreme Court sitting; *Utusan Melayu (M) Bhd. v. National Union of Journalists Malaysia* (SC Civil Appeal No. 01-46-89)]

JUDGMENT

Mohd. Jemuri Serjan SCJ:

There are two appeals from the High Court before us involving the same issues and so were heard together. In Civil Appeal No. 01-46-89, the appellant is the Minister of Labour ("the Minister") and in Civil Appeal No. 02-356-89 the appellant is the Utusan Malaya (M) Bhd ("Utusan Melayu") while the respondent in both appeals is the National Union of Journalists Malaysia ("the union"). The appeal is against the decision of the High Court handed down in Kuala Lumpur on 13 December 1989, allowing the application of the union for an order of *certiorari* to quash the decision of the Minister dated 13 March 1988 who refused to refer a trade dispute to the Industrial Court and an order of *mandamus* directed to the Minister to refer the said dispute to the Industrial Court under s. 26(2) of the Industrial Relations Act 1967 ("the Act").

The union filed a notice of motion under O. 53 r. 1 of the Rules of the High Court on 26 May 1988. In the statement in support of the notice of motion the union set out the following grounds for seeking the relief namely:

(a) Acted without any lawful or valid or reasonable grounds and or failed or refused to give any reasons for the exercise of his statutory discretion in the manner he did.

(b) Failed or refused to take into account the fact that the applicant's report of a trade dispute remains unsettled or unresolved contrary to the purpose of the said Act as envisaged by the preamble to the said Act.

(c) Denied or deprived the applicant its legitimate and or reasonable expectation to have the trade dispute over the dismissal of the workman by the 2nd respondent ventilated in the Industrial Court with a view to a remedy under the said Act especially in view of the fact that the 2nd respondent had denied natural justice both to the workman and the applicant in deciding to dismiss the workman on the allegations in Exhibit NUJ2.

(d) The 1st respondent acted in excess of or without jurisdiction or abused his discretion and or acted *mala fides* in exercising his statutory discretion in the manner he did under s. 26(2) of the said Act.

In allowing the application the learned Judge seemed to have been satisfied that the Minister acted in excess of jurisdiction when he refused to refer the dispute to the Industrial Court under s. 26(2) of the Act. Unfortunately the judgment is brief and sketchy and for the purpose of this appeal it is necessary to reproduce the relevant part which reads:

On 12 March 1988, the DGIR informed the Minister of Labour that there was no likelihood of an amicable settlement of the dispute between the applicant and the 2nd respondent. The Minister considered all the relevant documents submitted to him including the report of the DGIR and replies of Yazid. In his affidavit at para. 8, the Minister said that having done so he "was satisfied that Che Yazid bin Che Man had been dismissed with just cause or excuse by the second respondent, and it was not expedient to refer the matter to the Industrial Court.

In deciding that Yazid had been dismissed with just cause or excuse, the Minister had adjudicated upon the issues in the trade dispute which rightly is the function of the Industrial Court to decide. Because of that I find that the Minister had exceeded the powers given to him under s. 26(2) of the Industrial Relations Act *by usurping the function of the Industrial Court.* (The emphasis is ours).

It is the part of the judgment that is underlined that gives rise to this appeal. It seems to suggest that because the Minister refused to refer the trade dispute to the Industrial Court upon the grounds stated by the learned Judge the Minister usurped the functions of the Industrial Court. If this is correct then to follow this statement to its logical conclusion the Minister must under all circumstances refer every trade dispute to the Industrial Court. In our view such an argument goes too far and is not supported by authorities. The Minister may very well refuse to refer a trade dispute to the Industrial Court on proper grounds and in such a case he cannot be said to have adjudicated upon matters which are entrusted to the Industrial Court. The question to be asked is whether the Minister in the exercise of his discretion has acted according to law. In the case of *National Union of Hotel, Bar and Restaurant Workers v. Minister of Labour and Manpower* [1980] 2 MLJ 189 the Federal Court dismissed the appeal because the appellants admitted that five union workers were gambling while on duty in the hotel premises and contravened r. 13(3) of the Hotel Rules and therefore their dismissal was justified. In that case the appellants appealed against the decision of the Minister who refused to refer to the Industrial Court the dismissal of the five union workers who were found gambling. At p. 191 Raja Azlan Shah [CJ (Malaya) as he then was] said:

In the case of the former, they admitted gambling in the hotel premises; in the case of the latter he denied it. In the circumstances he said the complaint of the union workers was vexatious and without merit. We can therefore see a reason to the effect that on receipt of the complaint the Minister has satisfied himself from information in his possession as to the merits of the complaint and he then decided that it was not expedient to refer it to the Industrial Court and it would in our opinion be a waste of time and money and contrary to the policy and object of the Act to do so.

In the case of *Minister of Labour Malaysia v. Lie Seng Fatt* [1990] 1 CLJ (Rep) 195 Hashim Yeop A. Sani CJ (Malaya) in delivering the judgment of this Court at p. 198 said:

As regards the allegation that the Minister usurped the powers of the Industrial Court, we do not see any basis for us to come to the conclusion. In our view the Minister must have considered that the complaint was not a fit and proper one for reference to the Industrial Court based on the facts before him.

and at p. 199 the learned Chief Justice said:

The Minister's discretion under s. 20(3) is wide but not unlimited. As stated earlier, so long as he exercises the discretion without improper motive, the exercise of discretion must not be interfered with by the Court unless he has misdirected himself in law or had taken into account irrelevant matters or had not taken into consideration relevant matters or that his decision militates against the object of the statute. Otherwise he had a complete discretion to refuse to refer a complaint which is clearly frivolous or vexatious which in our view this is one.

The facts in this case showed that there was really no dismissal in the true sense of the word. Lie Seng Fatt was transferred to a post within the control and sphere of the present company, Koperasi Belia Bersatu Bhd., and in the process the appellant could have been given position which he considered inferior to his previous job. In this case the Minister appealed against the decision of the High Court which issued an order of *certiorari* to quash his decision to refer the dispute to the Industrial Court. The Supreme Court allowed the appeal of the Minister. These two cases clearly show that under certain circumstances based on the particular facts of each particular case it is in order for the Minister to refuse to refer a trade dispute to the Industrial Court. In both cases the Federal Court and the Supreme Court upheld the decision of the Minister not to refer the trade dispute to the Industrial Court but there was no suggestion whatever that the Minister in the first place had usurped the functions of the Industrial Court when he refused to refer the trade dispute to the Industrial Court.

We therefore cannot agree with the learned Judge when he said: "the Minister had adjudicated upon the issues in the trade dispute which rightly is the function of the Industrial Court to decide" as the ground to complain that the Minister had acted in excess of his jurisdiction and quash his decision. After all the very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to lead differing opinion as to which is to be preferred. It would go a long way to clear the obscure part of the judgment had there been a properly reasoned judgment.

Nevertheless the finding of the Judge that the Minister had exceeded the powers given to him under s. 26(2) of the Act or had acted *ultra vires* that section can be supported in our view by more fundamental reasons. The crucial question here for our determination is whether the Minister acting under s. 26(2) of the Act had exercised his discretion in accordance with law. There is, however no question that the Minister had acted *mala fide* in this case. The principles upon which an Executive may exercise his discretion vested in him under any Act, particularly where the discretion is expressed in wide terms, had been authoritatively laid down in many cases, notably in the celebrated case of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223 and quoted with approval by Hashim Yeop A. Sani CJ (Malaya) in *Minister of Labour Malaysia v. Lie Seng Fatt* (*supra*) at p. 198. It was contended before us, in essence, that the conferment by Parliament of a discretion upon the Minister under s. 26(2) of the Act without any express limitation placed upon it in the Act would give the Minister a subjective power. We are unable to accept this contention because authorities show that the Court has developed a broad or extended doctrine of *ultra vires* whereby they may review action taken in the exercise of wide, discretionary powers. The case of *Associated Provincial Picture Houses v. Wednesbury Corporation* (*supra*) clearly rejects the idea of a subjective test in the case of the exercise of discretionary powers. Lord Greene MR at p. 228 said:

> What then, is the power of the Courts? They can only interfere with an act of Executive authority if it can be shown that the authority has contravened the law.

Further down the page he continued:

> As I have said, it must always be remembered that the Court is not a Court of appeal. When discretion of this kind is granted the law recognises certain principles upon which that discretion must be exercised, but within the four corners of those principles the discretion, in my opinion, is an absolute one and cannot be questioned in any Court of law. What then are

those principles? They are well understood. They are principles which the Court looks to in considering any question of discretion of this kind. The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implicating matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters.

The modern case of the first importance in this field is *Padfield & Ors. v. Minister of Agriculture, Fisheries and Food & Ors.* [1968] 1 All ER 694 at p. 717 Lord Upjohn said:

So it is clear that the Minister has a discretion and the real question for this House to consider is how far that discretion is subject to judicial control.

My lords, on the basic principles of law to be applied there was no real difference of opinion, the great question being how they should be applied to this case. The Minister in exercising his powers and duties conferred on him by statute can only be controlled by a prerogative order which will only issue **if he acts unlawfully**. (Emphasis supplied). Unlawful behaviour by the Minister may be stated with sufficient accuracy for the purpose of the present appeal (and here I adopt the classification of Lord Parker CJ, in the Divisional Court): (a) by an outright refusal to consider the relevant matter, or (b) by misdirecting himself in point of law, or (c) by taking into account some wholly irrelevant or extraneous consideration, or (d) by wholly omitting to take into account a relevant consideration. There is ample authority for these propositions which were not challenged in argument. In practice they merge into one another and ultimately it becomes a question whether for one reason or another the Minister has acted unlawfully in the sense of misdirecting himself in law, that is, not merely in respect of some point of law but by failing to observe the other headings which I have mentioned.

Further down the page Lord Upjohn continued:

So I must examine the reasons given by the Minister, including any policy on which they may be based, to see whether he has acted unlawfully and thereby overstepped the true limits of his discretion, or as it has been frequently said in the prerogative writ cases, exceeded his jurisdiction. Unless he has done so the Court had no jurisdiction to interfere. It is not a Court of appeal and has no discretion, however much the Court may disagree with its exercise.

Padfield's case was later followed by Lord Denning MR in *Breen v. Amalgamated Engineering Union & Ors.* [1971] 2 QB p. 175. At p. 190 Lord Denning MR said:

The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. This is established by *Padfield v. Minister of Agriculture, Fisheries & Food* [1968] AC 997 which is a landmark in modern administrative law.

Another leading authority is the case of *Education Secretary v. Tameside Metropolitan Borough Council* [1977] AC 1014. In the Court of Appeal Lord Denning MR rejected the subjective test saying that the case of *Liversidge v. Anderson* [1942] AC 206 was applicable only during war time and no longer applicable today as pointed out by Lord Radcliffe in *Nakkuda Ali v. Jayaratne* [1951] AC 66, 77 and by Lord Reid in *Ridge v. Baldwin* [1964] AC 40, 73. In the House of Lords, Lord Wilberforce at p. 1047 touching on subjective formula of a statute said:

> (2) The section is framed in a "subjective" form - if the Secretary of State "is satisfied." This form of section is quite well known, and at first sight might seem to exclude judicial review. Sections in this form may, no doubt, exclude judicial review on what is or has become a matter or pure judgment. I do not think that they go further than that. If a judgment requires, before it can be made, the existence of some facts, then, although the evaluation of those facts is for the Secretary of State alone, the Court must inquire whether those facts exist, and have been taken into account, whether the judgment has been made upon a proper self-direction as to those facts, whether the judgment has not been made upon other facts which ought not to have been taken into account. If these requirements are not met, then the exercise of judgment, however *bona fide* it may be, becomes capable of challenge: see *Secretary of State for Employment v. ASLEF* (No. 2) [1972] 2 QB 455, per Lord Denning MR at p. 493.

The principles enunciated in these leading cases had been adopted and applied by our Courts in *National Union of Hotel, Bar and Restaurant Workers v. Minister of Labour and Manpower* (*supra*) and lately by the Supreme Court in *Minister of Labour Malaysia v. Lie Seng Fatt* (*supra*), just to mention a few. This disposes of the contention that when discretionary powers are given to an Executive the test to be applied is a subjective test.

Learned Counsel for the Minister also complained that there were no guidelines in the Act for the Minister to follow when exercising his discretion. Up to a point it is correct but the guidelines, nevertheless, are there, evolved from case to case. It is commonplace for legislature to confer wide discretionary powers on Ministers and Public Authorities without prescribing in any detail if at all standards in accordance with which those powers are to be exercised either because such standards are impossible to formulate in advance or are inappropriate. See the case of *Swan Hill Corporation v. Bradhury* [1937] 56 CLR 746 where Dixon J at p. 757 said:

> In the course of the modern attempt by provisions of a legislative nature to reconcile the exercise any enjoyment of proprietary and other private rights with the conflicting considerations which are found to attend the pursuit of the common good, it has often been thought necessary to arm some public authority with a discretionary power to allow or disallow the action of the individual, notwithstanding that it has been found impossible to lay down for the guidance of the individual, or of the public authority itself, any definite rule for the exercise of the discretion. The reason for leaving the ambit of the discretion undefined may be that legislative foresight cannot trust itself to formulate in advance standards that will prove apt and sufficient in all the infinite variety of facts which may present themselves. On the other hand, it may be because no general principles or policy for governing the particular matter it is desired to control are discoverable, or, if discovered, command general agreement.

However, the Courts since the case of *Wednesbury Corporation* (*supra*) had consistently applied the basic legal principles laid down in that case as guidelines. See for example the cases of *Padfield* and *Tameside* (*supra*). Indeed this Court had succinctly set out those principles as guidelines for the use of those who are vested by statutes with wide discretionary powers. See, for example, the case of *Lie Seng Fatt* (*supra*) at p. 198. The passage from the judgment of Lord Upjohn in the *Padfield's* case reproduced elsewhere in our judgment provides ample guidelines. By way of emphasis, perhaps, it is appropriate in this regard to cite Lord Reid's statement in that case at p. 699:

> It is implicit in the argument for the Minister that there are only two possible interpretations of this provision - either he must refer every complaint or he has an unfettered discretion to refuse to refer in any case. I do not think that is right. Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole,

> and construction is always a matter of law for the Court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the discretion of the Courts.

and Lord Diplock's statement at pp. 1064-1065 in the *Tameside* case:

> It was for the Secretary of State to decide that. It is not for any Court of law to substitute its own opinion for his; but it is for a Court of law to determine whether it has been established that in reaching his decision unfavourable to the council he had directed himself properly in law and had in consequence taken into consideration the matters which upon the true construction of the Act he ought to have considered and excluded from his consideration matters that were irrelevant to what he had to consider: see *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223, per Lord Greene MR at p. 229. Or, put more compendiously, the question for the Court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?

The question is how should these principles be applied to the instant case? In this regard Lord Roskill's statement in *Congreve v. Home Office* [1976] 1 QB (CA) 629, at 657 is apt:

> Nothing I am about to say goes in any way outside or beyond what was authoritatively laid down in those cases. The law does not stand still, and those cases, while stating the relevant principles, leave open their application to the particular facts of particular cases which from time to time come before the Courts.

In our view this question must be solved aliunde by examining the facts upon which the Minister expressed himself as satisfied that it was not expedient for him to refer the trade dispute to the Industrial Court. It is therefore convenient to look at the facts of this case.

Che Yazid bin Che Seman @ Yazid Othman was a senior reporter/journalist with Utusan Melayu of 12 years' standing and President of the union. On 28 August 1987 The Star carried a report that Encik Yazid was suspended from his post as President by the union on account of certain allegations of misconduct against him while he was in Tokyo for a fellowship course, pending an inquiry into the allegations. Both Berita Harian and the New Straits Times on 29 August 1987 published similar reports but with more details. Apparently a Singaporean woman journalist had lodged a report against Yazid Othman, alleging that he had behaved improperly towards her. This woman who was with the New Straits Times cited two occasions when Yazid Othman behaved improperly - once while they were in a bus and the second when she blacked out after having a glass of beer. It was also alleged that Yazid Othman conducted himself improperly towards two Japanese women staff members of the Nihon Shimbon Kyokai. On 30 August 1987 however, the New Straits Times published another report captioned "No Truth To Claims by Singaporean, says NUJ's Yazid". Yazid was quoted as saying at an interview with the New Straits Times he failed to understand why a Singapore journalist had accused him of behaving improperly towards her: but whatever the motive the truth would prevail as God was his witness.

As a result of the publicity in the newspapers of his suspension and allegations of misbehaviour, the Utusan Melayu wrote him a letter on 15 September 1987, drawing his attention to the adverse newspaper reports about him which the Utusan felt had hurt its reputation and impaired the good image of the Utusan Melayu group of newspapers. The letter also stressed the fact that the Utusan Melayu took a serious view of the matter and

was in fact seriously considering whether his presence as a journalist with the newspapers would further damage the image of the company since the allegations against him concerned the question of his moral virtues and his position as a journalist. Before any action would be taken against him the Utusan Melayu requested Yazid to explain the allegations against him and in the meantime he was suspended from his services as a journalist. On 29 September 1987 Yazid wrote his reply saying that it would be futile for him to give any explanations on the matter because Utusan Melayu had already prejudged the issues as evidenced by his suspension. However, he denied that the publicity affected the quality of the performance of his duties because he was not guilty of the allegations. On the other hand he questioned the validity of his suspension and demanded reinstatement in his job.

The reaction of the Utusan Melayu to this reply was the dismissal of Yazid Othman with effect from the receipt of a letter to the effect dated 5 October 1987. Apparently, the grounds for the dismissal as can be gathered from the letter were the failure on the part of Yazid to explain the matters raised in the letter of 15 September 1987, his silence on the allegations against him and the adverse publicity arising from those allegations which it claimed had affected the image of the Utusan Melayu. Then the union took up the matter of the dismissal with the Utusan Melayu in an attempt to obtain Yazid's reinstatement in his former job arguing that the grounds for the dismissal had nothing to do with his employment as a journalist, and that the adverse publicity was not of Yazid's doing who in fact was an unfortunate victim of such publicity. Utusan Melayu stood firm on its decision to dismiss Yazid explaining further that as a result of the adverse publicity the Utusan Melayu could not repose any faith and confidence in him to carry out his duties effectively as a journalist.

Having failed to persuade the Utusan Melayu to reinstate Yazid the union proceeded to report the trade dispute to the Jabatan Perhubungan Perusahaan, Malaysia in accordance with the provisions of the Industrial Relations Act 1967. In its report to the Director-General of Industrial Relations dated 3 November 1987 the union stated that Yazid Othman was dismissed from his services without just cause or excuse and that the dismissal was unjust. In a written submission dated 12 December 1987 the union claimed, *inter alia*, the Utusan Melayu had no grounds to terminate the services of Yazid Othman and that the dismissal was without an inquiry, thereby contravening the rules of natural justice and repudiated the Utusan Melayu's claim that the adverse publicity was attributed to Yazid Othman. Upon this report the Director-General of Industrial Relations proceeded to initiate conciliation meetings with the parties concerned to attempt to secure an expeditious settlement of the trade dispute. The Minister was notified under s. 18(5) that there was no likelihood of the trade dispute being settled for the purpose of bringing s. 26(2) into play. Section 26(2) is in the following terms:

> The Minister may of his own motion or upon receiving the notification of the Director-General under s. 18 refer any trade dispute to the Courts if he is satisfied that it is expedient so to do.

In his affidavit dated 1 April 1989 the Minister explained the reasons why he decided it was not expedient to refer the trade dispute to the Industrial Court. He had taken cognisance of the fact that the trade dispute was in respect of Yazid's dismissal by the Utusan Melayu on 4 October 1987 as a result of an **alleged adverse publicity which had damaged the image of Utusan Melayu.** (See paras. 4 and 5). He further found that Yazid Othman had been given an opportunity to reply to the show-cause letter issued by the Utusan Melayu (see para. 6). He had also considered all the **relevant documents** including **the report** of the union **and the**

replies of Yazid Othman and after due and careful consideration of all the facts and circumstances of the case he was satisfied that Yazid Othman had been dismissed with just cause and excuse. (See para. 8).

We could not, however, identify which of the documents were relevant documents referred to by the Minister because he did not categorically particularise which documents were relevant and which were not, bearing in mind that there were three letters from the Utusan Melayu, one letter from Yazid Othman, four letters from the union including the report and the submission, and four extracts of the newspaper reports relating to the alleged misconduct of Yazid Othman. Be that as it may, we were satisfied that the Minister had only addressed his mind and given more weight to the adverse publicity, the reply from Yazid Othman to the Utusan Melayu's letter and the letter dismissing Yazid Othman. It would seem that the facts that weighed heavily on the mind of the Minister was the adverse publicity and the somewhat unsatisfactory reply from Yazid Othman. He completely ignored or had not given sufficient weight to the substantive allegations of misconduct against Yazid Othman, his public denial at the interview with the New Straits Times published on 30 August 1987, his denial in his letter to the Utusan Melayu, the report and the submission submitted by the union on behalf of Yazid Othman. The submission clearly raised the question of breach of the rule of natural justice in that the Utusan Melayu dismissed Yazid Othman without proper inquiry which should have put him on notice that the validity of the dismissal could be questionable.

In our view these are factors which the Minister should have taken into consideration and should have been given sufficient weight because they are palpably relevant and if he had done so he might have come to a different conclusion. It can therefore be said that in arriving at his decision the Minister had acted upon an incorrect basis of facts, thus vitiating the decision. In any event these factors clearly raised a number of pertinent issues which ought to be properly inquired into by the Industrial Court and more importantly the innocence of Yazid Othman of all the allegations against him, in the light of his denial, takes a centre stage prominence in establishing the invalidity of his dismissal.

Perhaps, it is pertinent at this juncture to recall what Lord Denning MR said when dealing with the exercise of discretion by an Executive, particularly in such matters as this:

> Much depends on the matter about which the Secretary of State has to be satisfied. If he is satisfied on a matter of opinion, that is one thing. If he has to be satisfied that someone has been guilty of some discreditable or unworthy or unreasonable conduct, that is another. To my mind, if a statute gives a Minister power to take drastic action if he is "satisfied" that a local authority has acted or is proposing to act improperly or unreasonably, then the Minister should obey all the elementary rules of fairness before he finds that the local authority is guilty or before he takes drastic action overruling them.

See *Tameside* case (*supra*) at p. 1025.

In the light of the principles that we have adverted to earlier on in the judgment we are of the view that the Minister in refusing to refer the trade dispute to the Industrial Court upon the grounds we already mentioned had acted unlawfully or to borrow the language of Lord Upjohn in the *Padfield's* case (*supra*) had overstepped the true limits of his discretion or as it has been frequently said in the prerogative writ cases exceeded his jurisdiction. In this respect we agree with the finding of the learned Judge.

It was urged upon us to consider our own decision in the case of *Su Thai Seng v. Minister of Labour and Manpower & Anor.,* Supreme Court Civil Appeal No. 234 of 1988 which was decided on 28 May 1990 (unreported). That case would not avail the appellants because it

can easily be distinguished on its particular facts in much the same way the cases of *Lie Seng Fatt* (*supra*) and *National Union of Hotel, Bar & Restaurant Workers v. Minister of Labour & Manpower* (*supra*) are distinguishable. In *Su Thai Seng's* case the appellant was found guilty of insubordination and dismissed from service after due inquiry before a domestic inquiry committee. There was no question of *mala fide* in the dismissal. Therefore the Minister in that case was satisfied that the dismissal of Su Thai Seng was with just cause and excuse and therefore not a proper case for reference to the Industrial Court. The facts of the instant case were nowhere nearly similar to those of the two cases. In the result we would dismiss this appeal with costs. Deposit of the second appellant to account of taxed cost.

Also found at [1991] 1 CLJ 31